

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 03 APR 24 AM 8:44
REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
G.S. Robins & Company) Docket No. FIFRA-07-2008-0017
126 Chouteau Avenue)
St. Louis, Missouri 63102) CONSENT AGREEMENT
) AND FINAL ORDER
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA or Complainant), Region VII and G.S. Robins & Company (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).

ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.

2. This Consent Agreement and Final Order (CA/FO) serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands and Pesticides Division, (WWPD) EPA, Region VII.

4. The Respondent is G.S. Robins & Company, located at 126 Chouteau Avenue, St. Louis, Missouri. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a Missouri corporation qualified to do business in the state of Missouri.

Statutory and Regulatory Background

5. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

6. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person to distribute or sell any pesticide which is adulterated or misbranded.

7. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "to distribute or sell" to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

8. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

9. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term "pest" as (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

10. Under 40 C.F.R. § 152.15, a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration if, inter alia, the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

11. Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), states that a pesticide is misbranded if, inter alia:

- (a) Its label does not bear the registration number as assigned under Section 7 to each establishment in which it was produced;
- (b) Any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the

ordinary individual under customary conditions of purchase and use;

(c) The labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, are adequate to protect health and the environment; or

(d) The label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under Section 3(d) of this Act, is adequate to protect health and the environment.

12. Section 2(q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(2)(A), states that a pesticide is misbranded if the label does not bear an ingredient statement on the immediate container which is presented or displayed under customary conditions of purchase.

13. Title 40 C.F.R. Part 156.10(g)(1) states, inter alia, that the label of each pesticide product must bear a statement which contains the name and percentage by weight of each active ingredient and the total percentage by weight of all inert ingredients.

Factual Allegations

14. On or about November 17, 2003, a representative of the Kansas Department of Agriculture (KDA) conducted an inspection at the City of Paola Water Treatment Plant located at Water Works Road-201, Paola, Kansas, to investigate the distribution or sale of Respondent's product known as ROBIN CS-2003 (Copper Sulfate Solution) and use of ROBIN CS-2003 as an algacide in the City of Paola's drinking water holding reservoir.

15. On or about November 18, 2003, a representative of KDA conducted an inspection at Respondent's place of business located at 2955 Chrysler Road, Kansas City, Kansas, to investigate the distribution of ROBIN CS-2003 and to determine Respondent's compliance with FIFRA.

16. On or about November 18, 2003, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection at Respondent's place of business located at 126 Chouteau Avenue, St. Louis, Missouri, to investigate the distribution or sale of ROBIN CS-2003 and to determine Respondent's compliance with FIFRA.

VIOLATIONS

17. Complainant hereby states and alleges that Respondent has violated FIFRA and the regulations promulgated thereunder as follows:

Count 1

18. The facts stated in paragraphs 1 through 16 are realleged and incorporated as if fully stated herein.

19. On or about April 23, 2003, Respondent claimed, stated, or implied that ROBIN CS-2003 could be used to control algae in lake or source water.

20. On or about April 24, 2003, Respondent distributed or sold one 530 lb. drum of ROBIN CS-2003 to the City of Paola Water Treatment Plant, Paola, Kansas, as documented by Invoice No. 56791 and Bill of Lading No. 66548.

21. The sale or distribution of ROBIN CS-2003 in Paragraph 20 above constituted a sale or distribution of a pesticide under 40 C.F.R. § 152.15 and Sections 2(t) and 2(u) of FIFRA, 7 U.S.C. §§ 136 (t) and (u).

22. At the time of the distribution or sale referred to in Paragraph 20 above, ROBIN CS-2003 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

23. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling an unregistered pesticide.

Count 2

24. The facts stated in paragraphs 1 through 16 are realleged and incorporated as if fully stated herein.

25. On or about April 23, 2003, Respondent claimed, stated, or implied that ROBIN CS-2003 could be used to control algae in lake or source water.

26. On or about April 24, 2003, Respondent distributed or sold one 530 lb. drum of ROBIN CS-2003 to the city of Paola Water Treatment Plant, Paola, Kansas, as documented by Invoice No. 56791 and Bill of Lading No. 66548.

27. The sale or distribution of ROBIN CS-2003 in Paragraph 26 above constituted a sale or distribution of a pesticide under 40 C.F.R. § 152.15 and Sections 2(t) and 2(u) of FIFRA, 7 U.S.C. §§ 136 (t) and (u).

28. At the time of the sale or distribution of ROBIN CS-2003 referenced in Paragraph 26 above, the label for ROBIN CS-2003 did not contain the label requirements stated in Paragraphs 11 and 12 above and was therefore misbranded.

29. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which is adulterated or misbranded.

Count 3

30. The facts stated in paragraphs 1 through 16 are realleged and incorporated as if fully stated herein.

31. On or about April 23, 2003, Respondent claimed, stated, or implied that ROBIN CS-2003 could be used to control algae in lake or source water.

32. On or about June 16, 2003, Respondent distributed or sold one 530 lb. drum of ROBIN CS-2003 to the city of Paola Water Treatment Plant, Paola, Kansas, as documented by Bill of Lading No. 70385.

33. The sale or distribution of ROBIN CS-2003 in Paragraph 32 above constituted a sale or distribution of a pesticide under 40 C.F.R. § 152.15 and Sections 2(t) and 2(u) of FIFRA, 7 U.S.C. §§ 136 (t) and (u).

34. At the time of the distribution or sale referred to in Paragraph 32 above, ROBIN CS-2003 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

35. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling an unregistered pesticide.

Count 4

36. The facts stated in paragraphs 1 through 16 are realleged and incorporated as if fully stated herein.

37. On or about April 23, 2003, Respondent claimed, stated, or implied that ROBIN CS-2003 could be used to control algae in lake or source water.

38. On or about June 16, 2003, Respondent distributed or sold one 530 lb. drum of ROBIN CS-2003 to the city of Paola Water Treatment Plant, Paola, Kansas, as documented by Bill of Lading No. 70385.

39. The sale or distribution of ROBIN CS-2003 in Paragraph 38 above constituted a sale or distribution of a pesticide under 40 C.F.R. § 152.15 and Sections 2(t) and 2(u) of FIFRA, 7 U.S.C. §§ 136 (t) and (u).

40. At the time of the sale or distribution of ROBIN CS-2003 referenced in Paragraph 38 above, the label for ROBIN CS-2003 did not contain the label requirements stated in Paragraphs 11 and 12 above and was therefore misbranded.

41. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which is adulterated or misbranded.

Count 5

42. The facts stated in paragraphs 1 through 16 are realleged and incorporated as if fully stated herein.

43. On or about April 23, 2003, Respondent claimed, stated, or implied that ROBIN CS-2003 could be used to control algae in lake or source water.

44. On or about August 5, 2003, Respondent distributed or sold one 530 lb. drum of ROBIN CS-2003 to the city of Paola Water Treatment Plant, Paola, Kansas, as documented by Bill of Lading No. 74069.

45. The sale or distribution of ROBIN CS-2003 in Paragraph 44 above constituted a sale or distribution of a pesticide under 40 C.F.R. § 152.15 and Sections 2(t) and 2(u) of FIFRA, 7 U.S.C. §§ 136 (t) and (u).

46. At the time of the distribution or sale referred to in Paragraph 44 above, ROBIN CS-2003 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

47. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling an unregistered pesticide.

Count 6

48. The facts stated in paragraphs 1 through 16 are realleged and incorporated as if fully stated herein.

49. On or about April 23, 2003, Respondent claimed, stated, or implied that ROBIN CS-2003 could be used to control algae in lake or source water.

50. On or about August 5, 2003, Respondent distributed or sold one 530 lb. drum of ROBIN CS-2003 to the city of Paola Water Treatment Plant, Paola, Kansas, as documented by Bill of Lading No. 74069.

51. The sale or distribution of ROBIN CS-2003 in Paragraph 50 above constituted a sale or distribution of a pesticide under 40 C.F.R. § 152.15 and Sections 2(t) and 2(u) of FIFRA, 7 U.S.C. §§ 136 (t) and (u).

52. At the time of the sale or distribution of ROBIN CS-2003 referenced in Paragraph 50 above, the label for ROBIN CS-2003 did not contain the label requirements stated in Paragraphs 11 and 12 above and was therefore misbranded.

53. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which is adulterated or misbranded.

CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

1. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of this CA/FO.

2. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CA/FO.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CA/FO.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal this CA/FO.

5. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

6. This CA/FO addresses and resolves all civil and administrative claims for the alleged FIFRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violation of FIFRA or any other applicable law.

7. Nothing contained in this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

9. Respondent certifies by signing this CA/FO that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

10. The effect of settlement described in paragraph 6 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 9 above, of this CA/FO.

11. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of Fifteen Thousand Eight Hundred Forty Dollars (\$15,840), as set forth in Paragraph 1 of the Final Order.

12. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

FINAL ORDER

Payment Procedures

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136i, and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay by cashier or certified check, a civil penalty, in the amount of Fifteen Thousand Eight Hundred Forty Dollars (\$15,840), on or before thirty (30) days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier or certified check which shall reference docket number (FIFRA-07-2008-0017), and shall be made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Copies of the check shall be mailed to:

Jonathan W. Meyer
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 North 5th Street
Kansas City, Kansas 66101

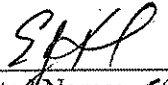

and

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region VII
901 North 5th Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

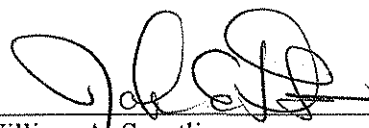
4. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

For the Respondent:
G.S. Robins & Company


Printed Name: ERIC J KOWALEWSKI
Title:  VICE PRESIDENT OPERATIONS

April 14 2008
Date

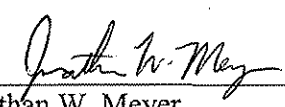
For the Complainant:
The United States Environmental Protection Agency



William A. Spratlin
Division Director
Water, Wetlands and Pesticides Division

Date

4/23/08



Jonathan W. Meyer
Assistant Regional Counsel

Date

4-23-08

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick

Regional Judicial Officer

Date April 24, 2008

IN THE MATTER OF G.S. Robins & Company, Respondent
Docket No. FIFRA-07-2008-0017

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Jonathan W. Meyer
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Dale A. Guariglia, Esq.
Bryan Cave LLP
211 North Broadway, Suite 3600
St. Louis, Missouri 63102-2750

Dated: 4/24/08


Kathy Robinson
Hearing Clerk, Region 7